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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,186	01/23/2002	Shoichi Toyoda	B-4465 619462-9	5323

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EXAMINER

LOCKETT, KIMBERLY R

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/057,186

Applicant(s)

TOYODA, SHOICHI

Examiner

Kim R. Lockett

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9/8/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1- 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-8 of copending Application No. 10057187. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications disclose the use of a butterfly damper comprising an inner circumferential frame; an outer circumferential frame; and at least one arm member having one end connected to the outer frame and an other end connected to the inner circumferential frame.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohyaba et al.

Ohyaba et al discloses the use of a butterfly damper for a speaker comprising an inner circumferential frame; an outer circumferential frame wherein: the arm members (claims 3 and 4) have a race track shaped cross section and a curved surface(claims 1 and 2) (see figure 2). Ohyaba et al further discloses the use of a resin integrally molded damper (column 3, lines 57-63)(claim 5) and injection molded resin (column 3, lines 63-68) (claims 6-8). Ohyaba et al also discloses a damper having opposite end surfaces and an inner peripheral surface, said inner peripheral surface being connected to the opposite end surfaces to form opposite connecting edge portions ; and at least one arm member (42) having one end connected to the outer circumferential frame and an other end connected to the inner circumferential frame, wherein: the one end of arm members(42) (claim 4) with a curved surface (claim 2) that is connected to a portion of the inner peripheral surface of the outer circumferential frame, the portion excluding the opposite connecting edge portions (see figure 2). Ohyaba clearly discloses the use of an arm member having a rectangular cross section with four curved

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corners (see figure 3) having a predetermined radius of curvature, in a perpendicular direction to a longitudinal direction of the arm member.

4. Claims <sup>9-16</sup>~~10-16~~ are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose the specifics of the thickness of the outer circumferential frame as recited by the applicant.

### ***Response to Arguments***

6. Applicant's arguments filed 9/8/03 have been fully considered but they are not persuasive. Ohyaba clearly discloses the use of an arm member having a rectangular cross section with four curved corners (see figure 3) having a predetermined radius of curvature, in a perpendicular direction to a longitudinal direction of the arm member. Ohyaba clearly discloses in figure 1 and figure 3, a rectangular cross section of arms (42) with four curved corners.

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7. Any inquiry of a **general nature or relating to the status of this application or filed papers** should be directed to the **Group receptionist whose telephone number is (703) 308-0956.**

Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center located at Crystal Plaza 4. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). The Group 2800 CP 4 Fax Center number is (703) 308-77(22 or 24). Fax numbers that provide an auto-reply fax receipt are: for before finals (703) 872-9318 and after finals (703) 872-9319.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC) whose telephone number is 800-786-9199.** Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

For requesting copies of Cited Art, Office Actions or the like, or General Problem solving, calls should be directed to the TC 2800 Customer Service Office whose telephone number is 703-306-3329 or by fax at 703-306-5515.

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett whose telephone number is (703) 308-7615.** The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi, can be reached on (703) 308-3370.

**Kim Lockett**  
**Patent Examiner**  
**Art Unit 2837**



**KIMBERLY LOCKETT**  
**PRIMARY EXAMINER**